

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**N.L., Appellant**

**and**

**U.S. POSTAL SERVICE, LOIZA STREET  
POST OFFICE, San Juan, PR, Employer**

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**Docket No. 20-0889  
Issued: December 17, 2020**

*Appearances:*  
*Kevin Card, for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 16, 2020 appellant, through her representative, filed a timely appeal from a February 6, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, appellant's representative asserted that oral argument should be granted because OWCP failed to consider all of the submitted evidence and arguments in support of appellant's claim for expansion. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

Pursuant to the Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>4</sup>

### **ISSUE**

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include additional right ankle conditions as causally related to the accepted December 23, 2016 employment injury.

### **FACTUAL HISTORY**

On December 23, 2016 appellant, then a 47-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she twisted her right ankle and scratched her right knee when she bent her ankle as she walked out of a building onto a step while in the performance of duty.<sup>5</sup>

Medical reports dated January 12 and 16, and February 9, 2017 by Dr. Carlos I. Carrion Lorenzo, an orthopedic surgeon, noted a history of injury that on December 23, 2017 appellant twisted her right ankle. Dr. Lorenzo provided an assessment of sprain of tibiofibular ligament of the right ankle.

A March 16, 2017 right ankle sonogram by Dr. Yadir Vasquez Figueroa, a general practitioner, provided an impression of posterior tibialis tenosynovitis and joint effusion.

OWCP, in a letter dated an April 12, 2017, informed appellant that her claim was formally accepted for sprain of tibiolfibular ligament of the right ankle.

OWCP subsequently received additional medical evidence, which included diagnostic test reports dated March 15 and 22, and May 16, 2017 by Manati Medical Center, Dr. Luis Goveo, a physiatrist, and Dr. Jose M. Diaz, a nuclear medicine specialist, respectively, which addressed appellant's right ankle and bilateral lower extremity conditions.

On May 19, 2017 Dr. Carlos J. Fraga Millan, a Board-certified orthopedic surgeon, diagnosed type 3 right ankle sprain, instability, weakness, and posterior tibial tendinosis with swelling.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> The Board notes that OWCP received additional evidence following the February 6, 2020 decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

<sup>5</sup> Appellant has a prior claim for a traumatic injury on June 11, 2014, which OWCP accepted for right ankle sprain, and assigned OWCP File No. xxxxxx576. Appellant's claims have not been administratively combined.

In a development letter dated June 14, 2017, OWCP informed appellant that additional medical evidence was needed to expand the acceptance of her claim to include: posterior tibialis tenosynovitis; posterior tibial tendinosis; Achilles tendinosis; and anterior talofibular ligament complete rupture. It advised her to submit additional evidence, including a well-rationalized report from her physician explaining how the accepted December 23, 2016 employment injury caused or aggravated the additional claimed medical conditions and any preexisting conditions. OWCP afforded appellant 30 days to respond.

In a July 14, 2017 statement, appellant responded to OWCP's development letter. She contended that the medical evidence of record established additional disabling employment-related conditions and need for medical treatment.<sup>6</sup>

By decision dated October 26, 2017, OWCP denied expansion of the acceptance of the claim, finding that the evidence submitted was insufficient to establish that the accepted December 23, 2016 employment injury had caused or aggravated the additional claimed conditions.<sup>7</sup>

OWCP subsequently received additional medical evidence. In a December 20, 2017 report, Dr. Fraga Millan diagnosed severe ankle sprain with anterior talofibular and calcaneofibular ligament sprain, secondary posterior tibial tendinosis, causalgia, and chronic pain with reflex sympathetic dystrophy signs.

Dr. Jesus M. Ramos, a physiatrist, related, in an April 16, 2018 report, a history of the December 23, 2016 employment injury. He provided impressions of complex regional pain syndrome (CRPS) of left lower limb, muscle wasting and atrophy, not elsewhere classified, right ankle and foot, pain in right ankle and joints of right foot, sprain of tibiofibular ligament of right ankle, subsequent encounter, and difficulty in walking, not elsewhere classified. Dr. Ramos noted that appellant's prior June 11, 2014 right ankle sprain was exacerbated by the employment injury on December 23, 2016. He explained how an ankle sprain recurred and the nature and development of CRPS. Dr. Ramos concluded that, based on the anatomy, risk factors, mechanism of injury, described above, and appellant's current symptoms and limitations and history of work-related events, her current symptoms were directly and causally related to the June 11, 2014 injury, which was aggravated and exacerbated by the December 23, 2016 employment injury.

On July 11, 2018 appellant requested reconsideration of the October 26, 2017 decision.

By decision dated October 9, 2018, OWCP denied modification of the October 26, 2017 decision, finding that there was no rationalized medical opinion evidence to expand the acceptance of the claim to include additional right ankle conditions.

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<sup>6</sup> Appellant filed a claim for compensation (Form CA-7) for disability from February 11 through March 24, 2017. She thereafter continued to file Form CA-7 claims for compensation. By decision dated August 28, 2017, OWCP denied appellant's Form CA-7 claims for compensation for the period February 11, 2017 and continuing.

<sup>7</sup> On November 14, 2017 appellant appealed the October 26, 2017 OWCP decision to the Board. In a letter dated May 10, 2018, appellant advised the Board that she wished to withdraw her appeal and, by order dated June 29, 2018, the Board dismissed her appeal as requested. *Order Dismissing Appeal*, Docket No. 18-0245 (issued June 28, 2018).

On March 5, 2019 appellant requested reconsideration and submitted additional reports from Dr. Ramos. In reports dated January 17 and February 26, 2019, Dr. Ramos reiterated his prior diagnoses of sprain of tibiofibular ligament of right ankle, subsequent encounter, and CRPS. He referenced a prior report dated May 18, 2018 in which he found that, based on appellant's medical history, diagnostic studies, and physical examinations, she had never fully recovered from her June 11, 2014 injury. Dr. Ramos noted that despite conservative treatment of the ankle after the June 11, 2014 employment injury, she never fully recovered and was only returned to full duty on her walking route two weeks prior to the new injury. He indicated that stepping onto an uneven surface caused a sudden loss of balance that made appellant's ankle twist. Dr. Ramos opined that, based upon the objective medical evidence and with reasonable medical certainty, the shearing force of her body weight on the twisted ankle joint caused the ligaments to overstretch, which caused a new sprain and aggravated the preexisting high-grade tear of the anterior talofibular ligament.

OWCP, by decision dated March 14, 2019, again denied modification, finding that there was no rationalized medical opinion evidence establishing causal relationship between appellant's additional conditions and the December 23, 2016 employment injury.

In an April 23, 2019 right ankle MRI scan report, Dr. Pedro L. Gonzalez Torres, a diagnostic radiologist, provided impressions of no acute abnormality of the ankle, no enhancing lesions, small joint effusion, and no major tendon tear.

On May 9, 2019 Dr. Kathya E. Ramos, Board-certified in physiatry and neuromuscular medicine, noted appellant's mechanism of injury on December 23, 2016. She indicated that appellant had a right ankle sprain in 2014 and reinjured her ankle in 2016 with recurrent right ankle/foot swelling and chronic right ankle/foot pain. Dr. Ramos referred her for evaluation of CRPS and to undergo an arterial and venous duplex scan of the lower extremities.

Diagnostic test reports dated January 25, 2018 whole body bone scan performed by Dr. Eduardo Pascual Ferrer, a diagnostic radiologist, provided an impression of mild osteoblastic changes on the proximal tarsal bone region of both feet, highly suggestive of mild traumatic versus mild stress-induced enthesopathies at the area of the navicular tarsal bone of both feet; limited, asymmetric degenerative changes involving the lower lumbar spine and both hips; no scintigraphic evidence of a generalized inflammatory or an abnormal osteoblastic process.

In follow-up progress notes dated July 24, 2018 and June 17, August 29, September 23, and October 28, 2019, Dr. Jesus Ramos reiterated his prior diagnoses and opinion on causal relationship. He advised that appellant could work with restrictions.

On November 20, 2019 appellant requested reconsideration of the March 14, 2019 decision.

In additional reports dated November 27 and December 18, 2018 and April 12 and December 2, 2019, Dr. Jesus Ramos reiterated his prior diagnoses and opinion on causal relationship. He also diagnosed CRPS, chronic instability, and tendinitis of right ankle.

OWCP, by decision dated February 6, 2020, denied modification of its prior decision.

### **LEGAL PRECEDENT**

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>8</sup>

The medical evidence required to establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, is rationalized medical opinion evidence.<sup>9</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>10</sup> Additionally, the opinion of the physician must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment factor(s) identified by the claimant.<sup>11</sup>

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>12</sup>

### **ANALYSIS**

The Board finds that this case is not in posture for decision.

In support of her request to expand acceptance of her claim to include additional right ankle conditions, appellant submitted a series of reports from Dr. Jesus Ramos who treated appellant from April 16, 2018 to December 2, 2019. Dr. Ramos reported a correct history of injury and noted appellant's prior June 11, 2014 employment-related right ankle sprain. In addition, he has been consistent in his diagnosis of CRPS of the right ankle; muscle wasting and atrophy, not elsewhere classified, right ankle and foot; pain in right ankle and joints of right foot; sprain of tibiofibular ligament of right ankle, subsequent encounter; difficulty in walking, not elsewhere classified; chronic instability of the right ankle; and tendinitis of right ankle. Dr. Ramos opined that, appellant's diagnosed conditions were directly related to her June 11, 2014 employment-related right ankle sprain, which was exacerbated by the December 23, 2016 work injury. In

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<sup>8</sup> *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>9</sup> *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

<sup>10</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>11</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>12</sup> *Y.S.*, Docket No. 19-1572 (issued March 12, 2020); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

reports dated January 17 and February 26, 2019, he explained that despite conservative treatment of the ankle after the June 11, 2014 employment injury, appellant never fully recovered and was only returned to full duty on her walking route two weeks prior to the new injury. Dr. Ramos indicated that stepping onto an uneven surface caused a sudden loss of balance that caused her ankle twist. He maintained that the shearing force of appellant's body weight on the twisted ankle joint caused the ligaments to overstretch resulting in a new sprain and aggravated the preexisting high-grade tear of the anterior talofibular ligament.

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>13</sup> OWCP has an obligation to see that justice is done.<sup>14</sup> The Board finds that, although Dr. Ramos' opinion was insufficiently rationalized to meet appellant's burden of proof to establish expansion of the acceptance of her claim to include additional right ankle conditions due to the accepted December 23, 2016 employment injury, it is sufficient to require further development of the case by OWCP.<sup>15</sup> Thus, the Board will remand the case to OWCP for further development of the medical evidence to obtain a rationalized medical opinion as to whether the accepted December 23, 2016 employment injury caused or aggravated a right ankle condition and whether this resulted in any period of disability. On remand OWCP shall administratively combine the current claim with OWCP File No. xxxxxx576. It shall then prepare a statement of accepted facts and obtain a second opinion examination as to whether the December 23, 2016 injury caused or aggravated her right ankle condition, and whether she had any disability due to the December 23, 2016 employment injury.<sup>16</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

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<sup>13</sup> *T.L.*, Docket No. 19-1572 (issued March 12, 2020).

<sup>14</sup> *Id.*

<sup>15</sup> See *M.H.*, Docket No. 18-1068 (issued June 2, 2020); *J.P.*, Docket No. 19-1206 (issued February 11, 2020); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>16</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 6, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: December 17, 2020  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board